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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

BENNY BLAKE,

Defendant and Appellant.

2d Crim. No. B236067
(Super. Ct. No. F463392)
(San Luis Obispo County)

Benny Blake appeals from an order denying his petition for review of the determination of the Board of Prison Hearings (BPH) that he met the criteria of a mentally disordered offender (MDO), and his commitment to the Department of Mental Health (Department) for treatment. (Pen. Code, § 2962 et seq.)¹ Appellant's sole contention is that the BPH lacked authority to determine that he was an MDO, and commit him to the Department, because the California Department of Corrections and Rehabilitation (CDCR) did not certify his MDO status before his scheduled release date. We conclude that the trial court correctly ruled that by certifying appellant's MDO status on the date of his scheduled release, CDCR complied with the statutory requirement that a person be certified "prior to release on parole," and we affirm. (§ 2962, subd. (d)(2).)

¹ All statutory references are to the Penal Code unless otherwise stated.

BACKGROUND

In 2008, appellant received a three-year state prison sentence. His scheduled release date was May 31, 2011.

On May 5, 2011, Erich Rueschenberg, Ph.D., evaluated appellant. Denise Mock, Ph.D., evaluated him on May 16, 2011. Both doctors concluded that he met the section 2962 MDO criteria. On May 31, 2011, the Chief Psychiatrist of the CDCR certified to the BPH that appellant met the section 2962 MDO criteria.

On July 29, 2011, the BPH determined that appellant met the criteria of section 2962 and issued an order committing him for treatment as an MDO, pursuant to section 2966, subdivision (b). On July 29, 2011, appellant filed his petition challenging the BPH determination.

On September 12, 2011, after appellant waived his right to a jury trial, the trial court conducted a hearing. Appellant's counsel challenged the commitment order on the sole ground that the "attempted" certification of appellant on May 31, 2011 (his scheduled release date) was invalid because section 2962, subdivision (d)(1) requires that a person be certified no later than the day preceding his scheduled release date. The trial court concluded that certifying appellant as an MDO upon his scheduled release date, CDCR certified him "prior to release on parole," as required by section 2962, subdivision (d)(1). It denied appellant's petition, found the section 2962 criteria to be true, and ordered appellant committed to the Department for treatment.

DISCUSSION

Appellant contends that the trial court erred by upholding the BPH determination that he was an MDO where the CDCR did not certify his MDO status before his scheduled release date. We disagree.

"The MDO law is a civil commitment scheme targeting state prisoners with severe mental disorders who are about to be released on parole." (*People v. Martin* (2005) 127 Cal.App.4th 970, 973.) Section 2962 specifies the MDO commitment criteria and procedure.

The relevant provision of section 2962, subdivision (d)(1) describes the timing for MDO certification as follows: "Prior to release on parole, . . . a chief psychiatrist of the Department of Corrections and Rehabilitation has certified to the Board of Parole Hearings that the prisoner has a severe mental disorder"

Appellant's argument that the MDO certification must occur on the date preceding a prisoner's scheduled release date is not persuasive. His argument rests primarily upon *Blakely v. Superior Court* (2010) 182 Cal.App.4th 1445. However, in contrast to appellant's case, the CDCR conducted its MDO evaluations and certification of Blakely *after* his scheduled parole release date. The reviewing court concluded that the Legislature set a mandatory deadline in section 2962, subdivision (d)(1), by requiring that MDO evaluations and certification be conducted "prior to release on parole." Where CDCR failed to meet that deadline, the court held that the resultant MDO determination and commitment order were not valid. (*Blakely*, at p. 1455.) Here, CDCR evaluated appellant several weeks before his scheduled release date, and certified his MDO status upon his scheduled release date.

Appellant also argues that recent amendments to section 2963 reflect a legislative recognition that acts impacting a prisoner's release must, to be effective, occur before the scheduled release date. That section states: "(a) Upon a showing of good cause, the Board of Parole Hearings may order that a person remain in custody for no more than 45 days beyond the person's scheduled release date for full evaluation pursuant to paragraph (1) of subdivision (d) of Section 2962 and any additional evaluations pursuant to paragraph (2) of subdivision (d) of Section 2962. [¶] (b) For purposes of this section, good cause means circumstances where there is a recalculation of credits or a restoration of denied or lost credits, a resentencing by a court, the receipt of the prisoner into custody, or equivalent exigent circumstances which result in there being less than 45 days prior to the person's scheduled release date for the evaluations described in subdivision (d) of Section 2962." Appellant thus argues that MDO certification must be conducted on or before the date preceding the scheduled release date, because it also impacts a prisoner's release.

While section 2963 establishes a method for obtaining additional time to evaluate a person after his scheduled release date, where there is good cause, it does not mention MDO certification or support appellant's claim that MDO certification must occur on the day preceding a person's scheduled release date. If the Legislature had intended to require the MDO certification to occur on the day preceding a person's scheduled release date, it could have said so. (*People v. Williams* (1999) 77 Cal.App.4th 436, 452 ["[W]hen the Legislature intends to prescribe a . . . deadline, . . . it does so expressly and not by implication.") Neither section 2963, nor section 2962, states that an MDO certification must be conducted on or before the day preceding a person's scheduled release date. "We presume the Legislature knew what it was saying and meant what it said. [Citation.]" (*Ramos v. Superior Court* (2007) 146 Cal.App.4th 719, 727.) The trial court properly ruled that by certifying appellant as an MDO on his scheduled release date, CDCR complied with the section 2962, subdivision (d)(1) requirement that certification must occur "prior to release on parole."

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Michael L. Duffy, Judge
Superior Court of San Luis Obispo County

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, Michael C. Keller, Deputy Attorney General, for Plaintiff and Respondent.